



December 19, 2001

Ms. Amy L. Sims
Assistant City Attorney
City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

OR2001-5995

Dear Ms. Sims:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156521.

The City of Lubbock (the "city") received a request for copies of various documents pertaining to a specified accident investigation. You claim that the submitted information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the submitted representative sample documents and videotape.²

You claim that the submitted information is excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108 provides in pertinent part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted . . . if:

¹ We note that in your initial correspondence to our office you also raised sections 552.103, 552.107, and 552.111 of the Government Code as applicable exceptions to disclosure. However, since you did not submit comments to our office stating the reasons why these exceptions apply to the submitted information and did not mark any of the information at issue in regard to these exceptions, we do not consider these exceptions to disclosure in this ruling. See Gov't Code § 552.301(e).

² We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

- (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that *did* not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1), (2) (emphasis added). Section 552.108(a)(1) protects information pertaining to a pending criminal investigation or prosecution. Section 552.108(a)(2) protects records pertaining to a concluded criminal investigation or prosecution that did not result in a conviction or a deferred adjudication. Generally, a governmental body claiming section 552.108 as an exception to disclosure of requested information must demonstrate, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement or prosecution. *See* Gov't Code §§ 552.108(a), (b), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the investigation associated with the submitted information "has not" resulted in conviction or deferred adjudication. Although this statement may imply that the case remains active, you do not otherwise inform this office of the status of the case. Further, you have failed to explain how the release of the submitted information would interfere with law enforcement. Based on the limited amount of information that you have provided to our office, we cannot assume that this case remains active or that it has reached a final result other than conviction or deferred adjudication. Accordingly, we conclude that none of the submitted information is excepted pursuant to section 552.108 of the Government Code.

We note that the submitted information contains an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code provides that except as provided by subsection (c), accident reports are privileged and confidential. *See* Transp. Code § 550.065(b). The Seventy-seventh Legislature recently amended section 550.065(c)(4) to provide for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 1544, § 5 (to be codified at Transp. Code § 550.065(c)(4)). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *See id.* In this case, the requestor has provided the city with at least two of the three pieces of information. Thus, the submitted accident report form must be released to the requestor.

You claim that photographs contained within the submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the

common law right to privacy.³ Information is protected from disclosure under the common-law right to privacy if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We find that some of the submitted photographs that we have marked, as well as information in the submitted case report documents that we have marked, constitutes highly intimate information the publication of which would be highly objectionable to a reasonable person. Accordingly, the city must withhold from disclosure the photographs that we have marked and the information that we have marked in the submitted case report documents pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

We also note that the submitted videotape contains photographs of peace officers. Section 552.119 of the Government Code excepts from disclosure a photograph of a peace officer that, if released, would endanger the life or physical safety of the officer, unless one of three exceptions applies.⁴ The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. *See Gov't Code § 552.119(a)*. This section also provides that a photograph exempt from disclosure under this section may be made public only if the peace officer gives written consent to the disclosure. *See Open Records Decision No. 502 (1988)*. You do not indicate, nor can we determine from our review of the submitted information, whether any of the peace officers in the submitted videotape are under indictment, charged with an offense by information, or are parties in a police civil service hearing or a case in arbitration involving the city. Therefore, we assume that no exceptions under section 552.119(a) are applicable in this instance. Accordingly, the city must withhold from disclosure all photographic images of peace officers on the submitted videotape pursuant to section 552.119 of the Government Code.

Finally, we note that the submitted case report documents and photographs contain Texas motor vehicle information. Section 552.130 of the Government Code provides in pertinent part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

³ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by the common-law right to privacy.

⁴ The term "peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. Section 552.130 excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Accordingly, the city must withhold from disclosure the motor vehicle information that we have marked in the submitted case report documents and photographs pursuant to section 552.130 of the Government Code.

In summary, the city must withhold from disclosure the photographs and the information in the submitted case report documents that we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. The city must withhold from disclosure all photographic images of peace officers on the submitted videotape pursuant to section 552.119 of the Government Code. The city must withhold from disclosure the motor vehicle information contained within the submitted information that we have marked pursuant to section 552.130 of the Government Code. The city must release the remaining submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

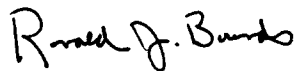
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 156521

Enc. Marked documents, photographs, and videotape

cc: Mr. Mel Tittle
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(w/o enclosures)